

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUSTIN J. CHANNEN,) Case No. CV 12-4635-PJW
Plaintiff,)
v.) MEMORANDUM OPINION AND ORDER
CAROLYN W. COLVIN,)
ACTING COMMISSIONER OF THE)
SOCIAL SECURITY ADMINISTRATION,)
Defendant.)

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his claims for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). He claims that the Administrative Law Judge ("ALJ") erred when he:

- 1) failed to properly evaluate Plaintiff's mental impairment;
- 2) rejected his treating doctor's opinion; and 3) found that he was not credible. For the reasons explained below, the Court concludes that the ALJ did not err.¹

¹ Carolyn W. Colvin is substituted for Michael J. Astrue as Defendant, pursuant to Fed. Rule Civ. Pro. 25(d).

II. SUMMARY OF PROCEEDINGS

In August 2008, Plaintiff applied for DIB and SSI, alleging that he had been unable to work since August 2005, due to paranoid schizophrenia, depression, and a mood disorder. (Administrative Record ("AR") 68, 73, 159-69.) The Agency denied the applications initially and on reconsideration. (AR 62-65.) Plaintiff then requested and was granted a hearing before an ALJ. (AR 80.) On October 25, 2010, he appeared with counsel and testified at the hearing. (AR 27, 30-38.) On December 1, 2010, the ALJ issued a decision denying the application for benefits. (AR 11-19.) Plaintiff appealed to the Appeals Council, which denied review. (AR 1-5, 7.) This action followed.²

III. ANALYSIS

A. The Mental Impairment Finding

Plaintiff contends that the ALJ failed to properly evaluate his mental impairment because he did not follow the special technique set forth in 20 C.F.R. §§ 404.1520a and 416.920a. (Joint Stipulation ("JS") at 4-5, 14.) For the reasons outlined below, the Court concludes that the ALJ did not err.

Agency regulations mandate that ALJs follow a special technique when evaluating mental impairments. 20 C.F.R. §§ 404.1520a and 416.1520a. This technique requires separate evaluations on a point scale of how the claimant's mental impairment impacts four functional areas: "activities of daily living; social functioning; concentration,

² Plaintiff previously filed applications for DIB and SSI that were denied by an ALJ in a written decision dated April 21, 2008. (AR 51-57.) The ALJ in the case at bar declined to reopen those prior applications. (AR 11.) Plaintiff does not challenge this decision.

1 persistence, or pace; and episodes of decompensation." 20 C.F.R.
2 §§ 404.1520a(c)(3)-(4) and 416.1520a(c)(3)-(4). At the initial and
3 reconsideration levels, these steps must be documented in a
4 Psychiatric Review Technique Form ("PRTF"); at the ALJ hearing and
5 Appeals Council levels they must be documented in the decisions. 20
6 C.F.R. §§ 404.1520a(e) and 416.1520a(e). Moreover, "the Social
7 Security Regulations require the ALJ to complete a PRTF and append it
8 to the decision, or to incorporate its mode of analysis into the ALJ's
9 findings and conclusions." *Keyser v. Comm'r Soc. Sec. Admin.*, 648
10 F.3d 721, 726 (9th Cir. 2011).

11 Here, the ALJ did not err in his evaluation of Plaintiff's mental
12 impairment because it is clear from his decision that he incorporated
13 the special technique's mode of analysis into his findings and
14 conclusions. Specifically, the ALJ determined that Plaintiff's
15 psychotic disorder was severe but that it did not meet or equal any of
16 the listed impairments. (AR 14.) In assessing Plaintiff's RFC, the
17 ALJ found a moderate impairment in attention and concentration,
18 limited Plaintiff to simple, repetitive tasks, and provided that
19 Plaintiff should work alone with only occasional public contact. (AR
20 14.) In analyzing the medical evidence, the ALJ adopted the opinion
21 of examining physician Dr. Norma Aguilar that Plaintiff had no
22 limitations in his daily activities. (AR 16, 283.) While the ALJ did
23 not make an explicit finding regarding episodes of decompensation,
24 there is no documentation of any episodes in the medical record and
25 Plaintiff does not argue that he suffered one.³ As a result, any

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27 ³ The only indication in the record of any episodes of
28 decompensation is contained in the opinion of Plaintiff's treating
(continued...)

1 error by the ALJ in failing to explicitly note the absence of any
2 episodes of decompensation was harmless. See *Stout v. Comm'r, Soc.*
3 *Sec. Admin.*, 454 F.3d 1050, 1056 (9th Cir. 2006) (holding error that
4 does not affect ultimate disability determination is harmless). In
5 short, the ALJ's analysis of Plaintiff's mental impairment complied
6 with 20 C.F.R. §§ 404.1520a and 416.1520a.

7 B. The Treating Physician's Opinion

8 Plaintiff contends that the ALJ erred by rejecting the opinion of
9 his treating psychiatrist, Dr. A.C. Blakes, in favor of the opinions
10 of the examining psychiatrist, Dr. Aguilar, and the State agency
11 reviewing physicians. (JS at 15-18, 21-22.) For the reasons
12 discussed below, the Court concludes that the ALJ did not err.

13 "By rule, the [Agency] favors the opinion of a treating physician
14 over non-treating physicians." *Orn v. Astrue*, 495 F.3d 625, 631 (9th
15 Cir. 2007); see also *Morgan v. Comm'r*, 169 F.3d 595, 600 (9th Cir.
16 1999) (explaining that a treating physician's opinion "is given
17 deference because 'he is employed to cure and has a greater
18 opportunity to know and observe the patient as an individual'"
19 (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987))). For
20 this reason, a treating doctor's opinion that is well-supported and
21 consistent with other substantial evidence in the record will be given
22 controlling weight. *Orn*, 495 F.3d at 631; *Embrey v. Bowen*, 849 F.2d
23 418, 421 (9th Cir. 1988). An ALJ may, however, reject a treating
24 doctor's opinion that is contradicted by another doctor's opinion for
25 "'specific and legitimate reasons' supported by substantial evidence
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27 ³ (...continued)
28 physician but, as discussed below, this opinion was based solely on
Plaintiff's report to the doctor and was properly rejected by the ALJ.

1 in the record." *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995)
2 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

3 Plaintiff was seen only once by Dr. Blakes, his treating
4 psychiatrist, on November 24, 2009. (AR 364.) In a Mental Impairment
5 Questionnaire dated January 13, 2010, Dr. Blakes opined that Plaintiff
6 had marked difficulties in social functioning; frequent deficiencies
7 in concentration, persistence, or pace; repeated episodes of
8 decompensation; and would have to miss work more than three times a
9 month. (AR 364-67.) He also indicated that Plaintiff's symptoms
10 included sleep disturbance; personality change; mood disturbance;
11 emotional lability; delusions or hallucinations; oddities of thought,
12 perception, speech, or behavior; social withdrawal or isolation;
13 blunt, flat, or inappropriate affect; manic syndrome; obsessions or
14 compulsions; paranoia or inappropriate suspiciousness; and difficulty
15 thinking or concentrating. (AR 364-65.) Dr. Blakes further opined
16 that Plaintiff's prognosis was fair-to-good with regular treatment and
17 follow-up. (AR 366.)

18 Dr. Aguilar examined Plaintiff on October 2, 2008, and opined
19 that he was only mildly limited in his ability to respond to changes
20 in a routine work setting and to respond to work pressure in a usual
21 setting. (AR 280-84.) A State agency reviewing physician, Dr.
22 Preston Davis, completed a Mental Residual Functional Capacity
23 Assessment on October 22, 2008, and opined that Plaintiff should be
24 limited to simple, repetitive tasks. (297-99.) Dr. Davis' opinion
25 was confirmed by another State agency physician, Dr. R.E. Brooks, on
26 February 24, 2009. (AR 332.)

27 The ALJ rejected Dr. Blakes' opinion in favor of the opinions of
28 Drs. Aguilar, Davis, and Brooks on the grounds that: (1) it was

1 inconsistent with the records from Plaintiff's mental health treatment
2 facility; (2) Dr. Blakes saw Plaintiff only once and the notes from
3 this visit did not support the limitations expressed in his opinion;
4 and (3) his opinion was internally inconsistent because he indicated
5 "extreme limitations" but assessed a Global Assessment of Functioning
6 or "GAF" score of 60, indicating "moderate, bordering on mild,
7 symptomatology and/or impairment."⁴ (AR 17.) These are specific and
8 legitimate reasons for questioning a doctor's opinion, see *Rollins v.*
9 *Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (upholding ALJ's
10 rejection of treating doctor's opinion that was internally
11 inconsistent); *Johnson v. Shalala*, 60 F.3d 1428, 1432-33 (9th Cir.
12 1995) (affirming rejection of treating doctor's opinion expressed in
13 letter that was inconsistent with doctor's own findings); and
14 *Magallanes v. Bowen*, 881 F.2d 747, 751-54 (9th Cir. 1989) (upholding
15 ALJ's rejection of treating doctor's opinion that was contradicted by
16 evidence in the record), and they are supported by the record. There
17 is no indication in any of the treatment notes that Plaintiff was as
18 limited as Dr. Blakes opined. Rather, the notes show that Plaintiff
19 was largely asymptomatic with only mild paranoia that had been
20 adequately controlled with medication. (AR 270-79, 369-78, 380-99.)
21 Further, the ALJ properly rejected Dr. Blakes' opinion of Plaintiff's
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24 ⁴ A GAF score is the clinician's judgment of the individual's
25 overall level of functioning. See American Psychiatric Association,
26 Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition,
27 Text Revision (2005) ("DSM-IV-TR") at 32-33. A GAF score of 51-60
28 indicates "[m]oderate symptoms (e.g., flat affect and circumstantial
speech, occasional panic attacks OR moderate difficulty in social,
occupational, or school functioning (e.g., few friends, conflicts with
peers or co-workers).\" DSM-IV-TR at 34.

1 extreme limitations because it was unsupported by the chart note from
2 his one visit with Plaintiff where the doctor reported that Plaintiff
3 had adequate sleep, good mood for most of the day, and only mild
4 paranoia. (AR 370.) Finally, the record supports the ALJ's finding
5 that Dr. Blakes' opinion was internally inconsistent because, while he
6 found Plaintiff suffered from extreme limitations, he assessed a GAF
7 score of 60, indicating only moderate to mild symptoms. In short, the
8 ALJ's rejection of Dr. Blakes' opinion is supported by substantial
9 evidence and will not be disturbed.

10 C. Credibility Finding

11 Plaintiff argues that the ALJ erred when he found that Plaintiff
12 was not credible. (JS at 22-26, 31.) For the following reasons, the
13 Court disagrees.

14 ALJs are tasked with judging the credibility of witnesses. In
15 making these credibility determinations, they may employ ordinary
16 credibility evaluation techniques. *Smolen v. Chater*, 80 F.3d 1273,
17 1284 (9th Cir. 1996). However, where a claimant has produced
18 objective medical evidence of an impairment which could reasonably be
19 expected to produce the symptoms alleged and there is no evidence of
20 malingering, the ALJ can only reject the claimant's testimony for
21 specific, clear, and convincing reasons, *id.* at 1283-84, which are
22 supported by substantial evidence in the record. *Thomas v. Barnhart*,
23 278 F.3d 947, 959 (9th Cir. 2002).

24 Plaintiff testified that he was unable to work due to his
25 inability to concentrate and his paranoia. (AR 30-32.) He explained
26 that he was hospitalized for mental health treatment when he was
27 younger but had not been hospitalized in the last three years. (AR
28 32.) He also explained that medication helped "a little" with his

1 paranoia. (AR 32.) Plaintiff reported that he had smoked marijuana
2 in the past but had stopped using it in June 2008. (AR 33.)
3 Plaintiff testified that he lived with his girlfriend and did not help
4 around the house with chores. (AR 33.) Finally, Plaintiff reported
5 that he attended group therapy for six months but stopped attending
6 because he was told that he "had to stop going." (AR 35.)

7 The ALJ found that Plaintiff's testimony was "out of proportion
8 to the objective findings" and inconsistent with the treatment
9 Plaintiff received. (AR 18.) The ALJ noted that Plaintiff's
10 "psychiatric condition has been well maintained" with medication and
11 that "[i]t is reasonable to assume that if [Plaintiff] were
12 experiencing the disabling problems alleged, he would have received
13 more aggressive treatment." (AR 18.) The ALJ also found that
14 Plaintiff's testimony was inconsistent with his report to Dr. Aguilar
15 that he was "able to run errands, shop, manage his own money, watch
16 television and exercise." (AR 18.) Finally, the ALJ concluded that,
17 while Plaintiff alleged paranoia, "he admits going out with his
18 girlfriend as well as going to group therapy." (AR 18.)

19 These are valid reasons for questioning a claimant's testimony.
20 *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (holding lack
21 of objective medical evidence to support claims is a factor ALJ can
22 consider in evaluating claimant's testimony); *Batson v. Comm'r*, 359
23 F.3d 1190, 1196 (9th Cir. 2004) (upholding ALJ's finding that claimant
24 was not credible where he contended that he could not work because of
25 pain but was able to tend to his animals, walk outdoors, go out for
26 coffee, and visit with neighbor); *Meanel v. Apfel*, 172 F.3d 1111, 1114
27 (9th Cir. 1999) (holding inconsistency between allegations of severe
28 pain and conservative treatment was proper basis for discounting

credibility). Furthermore, these reasons are supported by substantial evidence in the record. Though Plaintiff had reported bouts of paranoia and depression to various doctors and clinicians, the treatment notes indicate that his symptoms were adequately controlled with medication. Moreover, Plaintiff's conservative treatment--i.e., medication and group therapy--also suggested that he was not as impaired as he claimed. Finally, his claims of debilitating psychiatric symptoms were inconsistent with his ability to run errands, shop, watch television, exercise, and manage his own funds. In sum, the ALJ provided clear and convincing reasons that were supported by substantial evidence for discounting Plaintiff's credibility. As a result, this finding is affirmed.

IV. CONCLUSION

For the reasons set forth above, the Agency's decision is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: July 24, 2013.



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE